

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 1246 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE D.G.KARIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?  
1 to 5 No.

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RAJENDRABHAI MULCHAND SHARMA

Versus

STATE OF GUJARAT

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Appearance:

MR BB NAIK for Petitioner

S.R.DIVETIA, ADDL. PUBLIC PROSECUTOR for Respondents.

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CORAM : MR.JUSTICE D.G.KARIA

Date of decision: 04/03/96

ORAL JUDGEMENT

By this petition under Article 227 of the Constitution of India, the petitioner has questioned the legality and validity of the concurrent findings and orders passed by the Deputy Conservator of Forests, Sabarkantha at Himatnagar, and confirmed by the learned

Addl. Sessions Judge, Sabarkantha at Himatnagar.

I have heard Mr.B.B. Naik, learned Advocate for the petitioner, at length. I have also perused the several authorities relied upon by him.

The petitioner, who is the owner in respect of the truck bearing RTO Registration No.GJ-I-V-3568 has claimed the custody and possession of the said truck challenging the aforesaid concurrent judgments. The said truck came to be seized by the officers of the Forest Department on January 30, 1993, as the said truck was used in transportation of forest produce in contravention of the provisions of section 26 and 41 of the Indian Forest Act and Rule 66 of the Bombay Forest Rules. The concerned forest official conducted an inquiry after the aforesaid seizure of the truck. Necessary report under section 52 of the Act was made on May 3, 1993 to the second respondent herein. Pursuant to the said report, a show cause notice dated June 29,1993, a copy of which is annexed at Annexure 'A' to the petition, was served on 8 persons, including the petitioner who are said to have been involved in transporting the forest produce illegally and unauthorisedly.

By the reply dated August 16,1993, the petitioner denied the allegation and requested to release his truck. The second respondent, after holding necessary inquiry, ordered to confiscate the said truck. The Competent Authority also ordered to launch prosecution in respect of the said incident against the persons named in the order.

The petitioner preferred appeal against the said order, particularly in respect of the forfeiture of the said truck. As noticed hereinabove, the learned Addl. Sessions Judge, Sabarkantha at Himatnagar, confirmed the order of the Competent Authority on July 17,1995, dismissing the aforesaid appeal.

Mr.Naik, learned Advocate for the petitioner, mainly contended that the impugned orders are bad in law and against the principles of natural justice, for no opportunity to cross-examine the witnesses was offered to the petitioner nor copies of the relevant statements and the documents were supplied to the petitioner. The petitioner admittedly did not raise this point before the Sessions Court. It is, therefore, not mentioned in the impugned judgment as to copies of which documents were demanded by the petitioner and at what stage of inquiry

the right to cross-examine was sought. It clearly transpires from the record that Shri Ganeshbhai Dhulabhai Batik of Khedbrahma and Shri Govindbhai Muljibhai Jadav of village Choriwad have admitted on 4.6.1993 that they illegally and without any authority transported the forest produce in the truck in question. Similarly, S/Shri Gangaram Gobarji Vadera, Damor Ishwarbhai Amraji, Roraji Bheraji Gamar and Pravinsinh Kunvarsinh Rathod have also admitted on 24.9.93 of having committed offence under the Forest Act by illegally transporting the forest produce. Thus, all these persons who are involved in the incidence have admitted their guilt. Therefore, Kamalbhai Vasantbhai Pandya, who is the person among those involved in the incident did not remain present at the time of inquiry. It is manifest from the inquiry report that all these persons had cut forest tree and tried to take away the forest produce. The Competent Authority and the learned Additional Sessions Judge have therefore rightly believed that the above persons and the petitioner have committed the offence and have rightly initiated action and exercised the powers under section 61A of the Forest Act (Gujarat Amendment). It is not the case of the petitioner that the truck in transporting the forest produce illegally and unauthorisedly was used without his knowledge and behind his back.

Mr. Naik relied upon the case of State Bank of India v. D.C. Aggarwal and another, reported in AIR 1993 Supreme Court, 1197. The Supreme Court held in that case that the order imposing punishment on material neither supplied nor disclosed to the delinquent would vitiate the inquiry proceedings and such punishment would not be sustainable. The decision will not be applicable in the facts and circumstances of the case, inasmuch as the persons involved in the illegal transportation of forest produce have admitted the guilt.

Another judgment relied on by Mr. Naik is the case of D.K. Yadav vs. J.M.A. Industries Ltd., reported in (1993) 3 Supreme Court Cases 259 wherein the application of the principles of natural justice that no man should be condemned unheard intends to prevent the authority from acting arbitrarily affecting the right of the concerned person is upheld. In the present case, there is nothing on the record to show that at any point of time, the petitioner had made request to cross-examine the witnesses during the course of the inquiry nor there is any material on record to suggest that the copies of the document were ever demanded. In this set of facts and

circumstances, the decision relied on by Mr.Naik is of no assistance to the petitioner.

Mr.Naik lastly submitted the adjudicating officer's finding to the effect that the truck was also involved in past in the illegal transportation of forest produce is erroneous and not borne out from the record. It is essentially a question of fact and as such it cannot be entertained in exercise of jurisdiction of this Court under Article 227 of the Constitution of India.

There is no illegality or error apparent on the face of the record. Hence the petition is rejected.

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